UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 16-cr-257-10 (DWF/TNL)

UNITED STATES OF AMERICA, Plaintiff, v. THI VU, Defendant.	**GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION FOR RECONSIDERATION OF DETENTION**

The United States of America, by and through its attorneys, Andrew M. Luger, United States Attorney for the District of Minnesota, and Melinda A. Williams, Laura M. Provinzino, and Julie Allyn, Assistant United States Attorneys, hereby responds to defendant Thi Vu's motion for reconsideration of his detention. District Court Docket ("DCD") # 249. As set forth below, the defendant's motion is an attempt to have a second bite at the detention apple and comes nowhere close to complying with the legal standard to reopen a detention hearing. Accordingly, the government requests that the defendant's motion be summarily denied without a hearing and that, in any event, the defendant remain detained.

Factual and Legal Background

On October 4, 2016, defendant Thi Vu was arrested in Atlanta, Georgia, having been charged in a 17-person indictment with Conspiracy to Commit Sex Trafficking, in violation of 18 U.S.C. § 1594 (Count 1); Conspiracy to Commit

Transportation to Engage in Prostitution, in violation of 18 U.S.C. §§ 2421 and 371 (Count 4); Conspiracy to Engage in Money Laundering, in violation of 18 U.S.C. § 1956 (Count 6); and Conspiracy to Use a Communication Facility to Promote Prostitution, in violation of 18 U.S.C. §§ 1952 and 371 (Count 7).

On October 4, 2016, the defendant, represented by the federal defender, made his initial appearance in Atlanta, Georgia. DCD # 66. The defendant was initially detained pursuant to a written motion by the U.S. Attorney's Office. *Id.* The defendant waived his identity hearing but elected to have a detention hearing at his "home field" in Georgia, where he resided. *Id.* On October 7, 2016, the detention hearing occurred. *Id.* Following the contested hearing, the defendant was ordered detained pending trial by United States Magistrate Judge John K. Larkins III. *Id.* As Judge Larkins explained in his written order:

> The nature and circumstances of the offenses charged are very serious. Defendant is alleged to be affiliated with a large-scale, international sex trafficking organization that compelled victims into forced prostitution through the use of violence and the threat of violence against the victims and their families. The weight of the evidence is strong as to this defendant. He also has a criminal history of pimping and keeping a place of prostitution.

Id.[1]

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[1] The Georgia court incorrectly noted there was no rebuttable presumption in this case, but detained the defendant even under this lower standard. In fact, a rebuttable presumption of the defendant's detention *does* exist under 18 U.S.C. § 3142(e)(3)(D), which holds that "Subject to rebuttal by the person, it

On October 26, 2016, defendant Thi Vu made his initial appearance in Minnesota before Magistrate Judge Franklin L. Noel. DCD # 97. Judge Noel determined that the defendant had already been adjudicated detained pursuant to the detention hearing in Georgia and thus set the case over for arraignment. *Id.*

More than four months after his initial detention hearing—despite no changes in the facts or circumstances underlying his detention—the defendant filed the instant motion requesting his release. DCD # 249. The government opposes the defendant's request to reopen his detention hearing as he has failed to make the threshold showing under 18 U.S.C. § 3142(f) required for this Court to revisit the determinations already made by the federal magistrate in Atlanta. Moreover, even if the detention hearing were reopened, in this presumptive detention case, there are no conditions or combination of conditions short of detention that will reasonably assure the appearance of the defendant and the safety of the community.

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shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed— . . . (D) an offense under chapter 77 of this title for which a maximum term of 20 years or more is prescribed[.]" The defendant is charged in Count 1 of the Indictment with Conspiracy to Commit Sex Trafficking, in violation of 18 U.S.C. § 1594, a chapter 77 offense punishable by a term of imprisonment up to life.

The Defendant Has Failed to Present a Basis Upon Which to Reopen his Detention Hearing

A detention hearing may be reopened prior to trial only if the court "finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community." 18 U.S.C. § 3142(f). "In other words, to reopen a detention hearing a defendant must, first, 'present [ ] information that was not known or available to him at the time of his original detention hearing,' and then, second, show that such information 'is material to and has a substantial bearing on whether he should remain detained.'" *United States v. Petters*, 2009 WL 205188, at *2 (D. Minn. Jan. 28, 2009) (*quoting United States v. Archambault*, 240 F.Supp.2d 1082, 1084 (D.S.D. 2002)).

"Courts have interpreted this provision strictly, holding that hearings should not be reopened if the evidence was available at the time of the initial hearing." *United States v. Ward*, 63 F.Supp.2d 1203, 1206 (C.D.Cal. 1999) (*citing United States v. Dillon*, 938 F.2d 1412, 1415 (1st Cir. 1991); *United States v. Hare*, 873 F.2d 796, 799 (5th Cir. 1989); and *United States v. Flores*, 856 F.Supp. 1400, 1405–07 (E.D.Cal. 1994)); *see United States v. Longs*, 2008 WL 906797, *2 (D. Minn. April 2, 2008) (defendant's contention that fairness requires his release "is not sufficient to reopen [detention] proceedings under section 3142"); *United States v. Jokhoo*, 2013 WL 3479416, * 2 (D. Minn. July 11, 2013) (affirming magistrate judge's denial of a reopening of the detention hearing under 3142(f)).

As the *Flores* court noted, 3142(f) is rooted in judicial efficiency and economy:

> There are very few proceedings in federal practice which encourage a party to be less than diligent in bringing forth all material evidence the first time a hearing is held . . . A rule that would not discourage a party for failing to acquire readily available evidence for presentation the first time is a rule that encourages piecemeal presentations. Judicial efficiency is not served by such a practice.

Flores, 856 F.Supp. at 1406; *see also United States v. Ward*, 235 F.Supp.2d 1183, 1185 (N.D.Okla. 2002) (in denying a motion to reopen the issue of pretrial detention, the magistrate judge observed that "the proffered information about Defendant's background, ties to the community and employment history were all known" at the time of the detention hearing).

3142(f) additionally works to protect against the practice of forum shopping either between judges or—as is the case here—between districts, where a defendant strategically elects to have his detention hearing in his home district and then, if unsuccessful in his argument for release, attempts to relitigate those same facts in a second jurisdiction. Courts are clear that a defendant does not get a "second bite" at the detention apple. As the *Bowens* court explained:

> Defendant and his Las Vegas attorney knew or should have known that Defendant was not entitled to a "second bite of the detention apple" in Arizona if the detention issue did not go his way in Las Vegas. Defendant gambled that his "home field" would be more favorable to release of a Nevada resident. It was not. Defendant must now abide by the consequences of that decision.

Bowens, 2007 WL 2220501, *3 (D.Ariz. July 31, 2007)

Here, the defendant cites to no authority in support of his motion. Nor does he attempt to argue that he has met the standard for reopening a detention hearing under 3142(f). Instead, he simply repackages the arguments made to the Georgia court—that the defendant was a low-level participant in the conspiracy who has a place to live and work upon his release—and urges this Court to reach a different conclusion as to the defendant's dangerousness. He does not attempt to make a showing as to why such evidence—routinely rejected by courts to reopen a detention hearing—was previously unavailable and material to dangerousness.[2] *See, e.g., Hare*, 873 F.2d at 799 (the testimony of the defendant's family and friends is not new evidence sufficient to reopen a detention hearing under 3142(f)); *Dillon*, 938 F.2d at 1415 (upholding district court's decision that affidavits of 18 individuals, including defendant's family and employers, were not new evidence sufficient to reopen a detention hearing under 3142(f)); *Bowens*, 2007 WL at *2-3 (defendant's rearguing information available in the pretrial services report and presenting information from family and friends "does not constitute a material change in circumstances to justify re-examination of defendant's detention"); *United States v. Holloway*, 2011 WL 4625962, *3 (D. Ariz. Oct. 6, 2011) (rejecting defendant's attempt to reopen detention hearing by presenting an array of evidence about the defendant's background and personal history, explaining "All of the information proffered as 'new' is personal to Defendant. It distorts reality and Defendant's credibility that Defendant did not know at the time of his [initial] detention hearing where he was born, educated, or . . . where his business records were or could be located at the time of his detention hearing.").

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[2] Indeed, it appears that the public defender in Atlanta argued many of the same points the defense now raises, highlighting the defendant's employment and ties to the community in arguing for the defendant's release. 10/5/15 Transcript at pp. 16 – 20.

In short, the defendant has come nowhere close to making the required showing under 18 U.S.C. § 3142(f) to trigger a reopening of the detention hearing. His motion to reopen detention is a statutorily-barred attempt to have a second bite at the detention apple and, under applicable caselaw, must be rejected by this Court.

The government further requests that the defendant's motion be denied on the papers. "The baseline rule is that a criminal defendant has no absolute or presumptive right to insist that the district court take testimony on every motion." *United States v. Connolly*, 504 F.3d 206, 219 (1st Cir. 2007) (internal quotation marks omitted); *see also United States v. Fazio*, 487 F.3d 646, 654–55 (8th Cir. 2007). An evidentiary hearing need not be held where "the record include[s] all of the information necessary for the court to rule on the motion." *Covey v. United States*, 377 F.3d 903, 909 (8th Cir. 2004); *United States v. Yielding*, 657 F.3d 688, 705 (8th Cir. 2011) ("[a] district court presented with a motion to suppress need not hold an evidentiary hearing as a matter of course, and a hearing is unnecessary if the district court can determine that suppression is unwarranted as a matter of law."). Here, where the defendant's motion does not contain allegations that, even if believed, would warrant the reopening of the detention hearing under 18 U.S.C. § 3142(f), the motion should be denied summarily, without a hearing.

The Defendant Should Regardless Remain Detained

Even if the Court found that the defendant met the threshold showing under 18 U.S.C. § 3142(f) and allowed the defendant to reopen the detention hearing, there are no conditions or combination of conditions short of incarceration that will reasonably assure the appearance of the defendant and the safety of the community.

Notably, this is a presumptive detention case. At the outset, the defendant has not rebutted this presumption and should remain detained. Moreover, as set forth in the Indictment, the defendant was an active and long-term participant in an international sex trafficking and money laundering conspiracy with ties to organized crime in Thailand. The defendant has been a member of this organization for years, with initial involvement beginning in 2009/2010 and continuing until he was encountered by law enforcement in spring 2016 at a house of prostitution in Atlanta and charged in Chamblee, Georgia with Keeping a Place of Prostitution.[3] Indeed, this was the second such charge for the defendant, who in 2012 was also charged in Georgia with Keeping a Place of Prostitution.

Under all of these circumstances, the government supports the recommendation of Pretrial Services and the finding of the Atlanta magistrate judge the defendant be detained pending trial.

Dated: February 28, 2017

Respectfully Submitted,

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s/ Melinda A. Williams

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[3] The defense asserts without citation that the discovery provided by the government suggests that the defendant "was at best a low level participant in this conspiracy." DCD # 249. To the contrary and as the government has informed the defense, the government's continuing investigation has revealed that the defendant's role in the conspiracy was even *greater* than the government first appreciated, with the defendant serving for years as a House Boss in Atlanta.